

On June 26, 2000, the Santa Clara County Grand Jury released their 1999-2000 Final Report titled “Investigation of the Oversight System for Reviewing Use-of-Force Cases in the San José Police Department.” The focus of the Grand Jury’s review was in the area of Use-of-Force complaint investigations against police officers employed by the City of San José. The Grand Jury made only two recommendations that were specific to and that required a response from the IPA.

1. That the IPA advises the City Manager of all complaint investigation cases in which it disagrees with the Chief.
2. That the IPA and/or designee attend all Class 1 Unnecessary Force interviews conducted by Internal Affairs.

In response to the first recommendation, the IPA informed the Grand Jury that the 1999 IPA Year End Report made reference to the number of cases in which the IPA disagreed with the Chief’s findings. In each of these cases the City Manager had an opportunity to inquire and consider the issues in disagreement. The City Manager also

had an opportunity to either agree with the Chief’s finding or change the finding to reflect the concerns raised by IPA that led to the disagreement.

As noted in the 1999 Year End Report, the IPA disagreed with the findings in four cases. Before a meeting with the City Manager is requested for disagreement review, the Police Auditor first attempts to resolve the disputed findings with the Internal Affairs Commander, then the Chief of Police in successive order. Once the Chief of Police and the Police Auditor have discussed the areas in disagreement, the Chief can either agree with the Police Auditor’s analysis and change the findings or continue to disagree with the analysis and allow the finding to stand as presented. If the Chief selects to let the finding stand, the Police Auditor may then choose to appeal to the City Manager for final disposition.

The review process for reconsidering a finding when a disagreement exists is designed to allow the Police Auditor with a process that is fair and impartial. To this end, the City Manager will continue to receive a written notices from the IPA and a request to meet to

consider the factual basis in dispute. The City Manager will then make a decision that is final and based on the facts as presented. In response to the second recommendation, the IPA informed the Grand Jury that the Police Auditor would make attendance at the Class 1 Unnecessary Use-of-Force interviews a priority. The Police Auditor also advised the Grand Jury that without an agreement with the Police Officer's Association, that allows the Police Auditor to delegate attendance at an officer interview to a qualified IPA staff member, the issue of attendance would continue to be problematic. The delegation issue ultimately went through a formal dispute resolution process with the Police Officer's Association and the City of San José.

The issue of attendance at officer interviews is one that the IPA has always taken seriously. The Police Auditor has made several attempts to improve attendance by delegating the duty to a qualified staff member or by foregoing a personal commitment or other assigned duty. As a City Office,

the Police Auditor and members of the IPA have a responsibility to participate in a variety of city programs like; Investing in Results; Public Safety City Service Area; staff recruitment and development; and an assortment of other duties that require time and commitment.

In order for the City of San José to continue to have a highly respected and recognized "Citizen Complaint" process, the challenges to the IPA's authority in discharge its duties, by the Police Officer's Association, must be addressed swiftly by the City.

UPDATE

On February 2, 2001, the IPA received a favorable Arbitration Decision from retired Justice Nat Agliano of JAMS¹ regarding the IPA's authority to delegate the duty of attending subject officer interviews. Justice Agliano agreed that the City Charter and the Municipal Code provide to the Independent Police Auditor the authority to delegate her duties and responsibilities and that this function is a matter of

managerial discretion not subject to meet and confer.

¹ JAMS stands for Judicial Arbitration Mediation Services.